

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JON TERENCE CONRAD,

Plaintiff-Appellant,

v.

JAMES LEE FOSTER, Sheriff; MICHAEL

COULTER, Chief Deputy Solicitor;

BETTY STROM, Deputy Solicitor;

No. 98-7412

DAVID E. RUSHTON, Director of
Corrections; COUNTY OF NEWBERRY,
SOUTH CAROLINA; JACKIE BOWERS,
Clerk; GOVERNOR'S OFFICE, sued as
unknown members of Governor's
Office; SUZIE NICHOLS,
Defendants-Appellees.

Appeal from the United States District Court
for the District of South Carolina, at Florence.
Charles E. Simons, Jr., Senior District Judge.
(CA-97-1619-4-06BE)

Submitted: May 4, 1999

Decided: May 26, 1999

Before HAMILTON, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Jon Terence Conrad, Appellant Pro Se. James Spencer Verner, III,
Newberry, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Jon Terence Conrad appeals the district court's order denying relief on his 42 U.S.C.A. § 1983 (West Supp. 1998) complaint. We have reviewed the record and the district court's opinion accepting in part and rejecting in part the magistrate judge's recommendation, and we find no reversible error. Accordingly, we affirm substantially on the reasoning of the district court.

We note that, in granting summary judgment for Defendants, the district court relied in part on the defense of official immunity. Immunity is an affirmative defense that must be pled by a defendant or it is waived. See Gomez v. Toledo, 446 U.S. 635, 640-41 (1980). Because Defendants failed to assert an immunity defense the district court was precluded from applying it. Nevertheless, we conclude that summary judgment was appropriately granted in favor of Defendants. With respect to Defendant Summer, summary judgment was proper because Conrad's pleadings failed to establish a prima facie case of unconstitutional prison conditions. See Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir. 1993); Williams v. Griffin, 952 F.2d 820, 824 (4th Cir. 1991). With respect to Defendants Strom and Nichols, summary judgment was proper because Conrad's claims of retaliation and conspiracy were so vague and conclusory as to be insufficient. See Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994); Buschi v. Kirven, 775 F.2d 1240, 1248 (4th Cir. 1985).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED